

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

OLGA DE PAZ)	
Claimant)	
VS.)	
)	
MONFORT, INC.)	Docket No. 234,745
Respondent)	
Self-Insured)	

ORDER

Respondent appealed Administrative Law Judge Pamela J. Fuller's preliminary hearing Order for Compensation dated February 22, 1999.

ISSUES

In this single docketed claim, claimant alleged work-related injuries with two separate accident dates of October 29, 1997, and June 18, 1998. Claimant requested temporary total disability compensation and payment of medical expenses for the October 29, 1997, accident. For the June 18, 1998, accident, claimant requested temporary total disability compensation and authorized medical treatment.

In the February 22, 1999, preliminary hearing Order for Compensation, the Administrative Law Judge only addressed the October 29, 1997, accident date and granted claimant's request for temporary total disability compensation and payment of medical expenses.

Respondent appeals and contends the Administrative Law Judge erred in proceeding with the February 22, 1998, preliminary hearing over its objection that claimant failed to follow the required notice procedures as contained in the preliminary hearing statute found at K.S.A. 1998 Supp. 44-534a. Furthermore, the respondent contends the Administrative Law Judge erred in ordering the respondent to pay claimant temporary total disability benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

In its brief, respondent contends the Appeals Board has jurisdiction to review the issues raised as those issues are certain defenses, that if disputed, are jurisdictional and subject to Appeals Board review. See K.S.A. 1998 Supp. 44-534a(a)(2).

The Appeals Board concludes that neither of the preliminary hearing issues raised by the respondent are a certain defense that apply to K.S.A. 1998 Supp. 44-534a(a)(2). The first issue is whether the Administrative Law Judge erred in proceeding with the preliminary hearing over respondent's objection that claimant failed to follow the required notice procedures contained in the preliminary hearing statute. The Appeals Board, on other occasions, has determined that a certain defense, as it applies to the preliminary hearing statute, is only a defense that goes to the compensability of the claim. This issue does not go to the compensability of the claim. Thus, the Appeals Board does not have jurisdiction to review this issue.

The second issue raised by the respondent contends that the Administrative Law Judge erred in ordering respondent to pay temporary total disability compensation to claimant. Again, the Appeals Board, on other occasions, has had an opportunity to review this issue and has consistently found that the administrative law judge has the authority to order temporary total disability benefits following a preliminary hearing. Therefore, the Appeals Board, at this juncture of the proceedings, does not have jurisdiction to review this issue. See K.S.A. 1998 Supp. 44-534a.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the respondent's appeal is dismissed and the preliminary hearing Order for Compensation entered by the Administrative Law Judge dated February 22, 1999, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of April 1999.

BOARD MEMBER

c: Brian D. Pistotnik, Wichita, KS
Terry J. Malone, Dodge City, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director